

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY

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MARTIN JOHNSON,

Plaintiff,

-v-

THE STATE OF NEW YORK, et al.,

Defendants.
-----X

10 Civ. 9532 (DLC)

MEMORANDUM OPINION

& ORDER

DENISE COTE, District Judge:

On January 31, 2012, defendants the State of New York and the New York State Department of Corrections and Community Supervision ("DOCCS") moved to dismiss based on the doctrine of sovereign immunity. "[A]s a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states' Eleventh Amendment immunity when acting pursuant to its authority under Section 5 of the Fourteenth Amendment." Gollomp v. Spitzer, 568 F. 3355, 366 (2d Cir. 2009) (citation omitted). "The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state." Id. (citation omitted); see also Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984).

New York State has not waived its sovereign immunity. Nor has Congress, through § 1983, abrogated the state's immunity.

See Santiago v. New York State Dept. of Corr. Servs., 945 F.2d 25, 31 (2d Cir. 1991). DOCCS is an arm of the state.

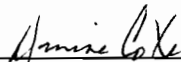
Consequently, plaintiff's claims against the State of New York and DOCCS, an agency of the State of New York, are barred by the Eleventh Amendment and must be dismissed.

CONCLUSION

The January 31 motion to dismiss is granted. The Clerk of Court shall remove the defendants the State of New York and DOCCS from this action.

SO ORDERED:

Dated: New York, New York
February 1, 2012



DENISE COTE
United States District Judge

COPIES SENT TO:

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